

County Courts (Ireland) Bill. [H.L.]

ARRANGEMENT OF CLAUSES.

Clause.

1. Default summons and notice of defence.
2. Rehearing in case of decree by default.
3. Service of process.
4. Confession of debt or part of debt and decree thereupon.
5. Agreement as to amount of debt and conditions of payment.
6. Enforcement of decrees.
7. Seal of the county court.
8. Jurisdiction of judge within or without his districts.
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10. Admission of documents.
11. When documents produced from proper custody may be read without further proof.
12. Notice of desire to use the affidavit of a particular witness or of particular facts.
13. Power to judge to decide issues of fact where a jury is discharged without giving a verdict.
14. Renewal of decree or dismiss.
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19. Recognizance or lodgment upon appeal.
20. Rules, &c., and forms of proceedings and scale of costs to be framed by judges appointed by Lord Chancellor.

[Bill 310.]

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Clause.

21. Deposit of moneys paid into court.
22. Audit of accounts of stamp duties, court fees, moneys paid into court, &c.
23. Interpretation.
24. Short title and construction.
25. Commencement of Act.
26. Repetals.

SCHEDULE.

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B I L L

INTITLED

An Act to amend the Law relating to County Courts in Ireland. A.D. 1900.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

- 5 1.—(1.) Subject to any rules and orders under this Act, in any action in a county court for a debt or liquidated money demand the plaintiff may at his option cause to be served a process in the ordinary form, or (upon filing an affidavit to the effect set forth in the prescribed form) a default process in the prescribed form or
 10 to the prescribed effect, and such last mentioned process shall be personally served on the defendant and if the defendant does not within eight days after service of the process, inclusive of the day of service, give notice by post or otherwise in writing signed by himself or his solicitor to the clerk of the peace of his intention to
 15 defend the plaintiff may after eight days and within two months from the day of service, upon proof of service or of an order for leave to proceed as if personal service had been effected, have a decree made in the office of the clerk of the peace against the defendant for the amount of his claim and costs, such costs to be
 20 taxed by the clerk of the peace.

Default
summons and
notice of
defence.
[See
51 & 52 Vict.
c. 43. s. 86.]

- (2.) A decree under this section shall be for payment forthwith or at such time or times, and by such instalments, if any, as the plaintiff or his solicitor may in writing have consented to take at the time of the filing of the affidavit or the application for the
 25 decree.

- (3.) Where the defendant has given notice of defence the clerk of the peace shall immediately upon the receipt of such notice send a letter to the plaintiff or his solicitor by post stating therein that the defendant has given such notice, and thereupon
 30 the action shall be tried before the judge in the prescribed manner.;

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(4.) Where the defendant neglects to give such notice the judge may, upon an affidavit disclosing a defence upon the merits and satisfactorily explaining his neglect, let in the defendant to defend upon such terms as he may think just.

(5.) Where personal service cannot be effected and the judge is satisfied by affidavit that reasonable efforts have been made to effect such service, and either that the process has come to the knowledge of the defendant or that he wilfully evades service of the same, the judge may order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as he may think just.

(6.) Provided always that no default process shall, without leave of the judge, be served instead of a process in the ordinary form where the amount claimed does not exceed five pounds, and such leave shall be given in the manner prescribed.

Rehearing
in case of
decree by
default.

[See
40 & 41 Vict.
c. 56, s. 60.]

2. In any case in which it is shown to the satisfaction of the judge by the defendant against whom any decree by default is obtained under this Act that such decree was obtained by fraud, misrepresentation, surprise, or mistake, the defendant may within such time, in such manner, and subject to such conditions and provisions as may be prescribed, apply for and obtain a hearing before the judge, and upon such hearing any such decree may be affirmed, varied, or rescinded as the justice of the case requires.

Service of
process.

3.—(1.) Service of process of the county court shall be effected in the manner directed or permitted by law unless otherwise ordered by the judge who may order service to be substituted or that service already had shall be deemed good service as the case may be.

14 & 15 Vict.
c. 57.

(2.) The plaintiff or party levying an execution may be served in the prescribed manner with an interpleader process under section one hundred and fifty of the Civil Bill Courts (Ireland) Act, 1851, in case he resides anywhere within the United Kingdom.

Confession
of debt or
part of debt
and decree
thereupon.

[See
51 & 52 Vict.
c. 43, s. 98.]

4.—(1.) Any defendant in any action may, if he thinks fit, in the presence of the clerk of the peace, or as may be prescribed, sign a statement confessing and admitting the amount of the debt or demand, or part of the amount of the debt or demand, for which the action has been brought.

(2.) The clerk of the peace shall as soon as conveniently may be after receiving such statement send notice thereof to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business, and thereupon it shall not be necessary for the plaintiff to prove the debt or demand so

confessed and admitted as aforesaid, but the court at the next sitting thereof, whether the parties or either of them attend such court or not, shall, upon proof by affidavit of the signature of the defendant, if such statement was not made in the presence of the clerk of the peace, make a decree for the debt or demand so confessed and admitted.

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5. If the defendant in any action agrees with the plaintiff upon the amount of the debt or demand in respect of which the action is brought, and upon the terms and conditions upon which the same may be paid or satisfied, the plaintiff and defendant, in the presence of the clerk of the peace, or in the presence of a solicitor, may sign a statement of the amount of the debt or demand so agreed upon, and of the terms and conditions upon which the same may be paid or satisfied, and the clerk of the peace shall receive such statement, and shall thereupon, upon proof by affidavit of the signatures of the parties, if such statement was not signed in the presence of the clerk of the peace, make a decree for the plaintiff for the amount of the debt or demand so agreed upon, and upon the terms and conditions mentioned in such statement.

Agreement as to amount of debt and conditions of payment.

[See 51 & 52 Vict. c. 43. s. 29.]

6. A decree under this Act, by default or in pursuance of an agreement, shall to all intents and purposes be the same and have the same effect and shall be enforced and enforceable in the same manner as if it had been a decree of the judge.

Enforcement of decrees.

7.—(1.) For every county court there shall be a seal, and all such summonses, processes, decrees and orders, issuing out of the said court as may be prescribed, shall in the prescribed manner be sealed or stamped with the seal of the county court, and all such summonses, processes, decrees and orders, purporting to be so sealed, shall be received in evidence without further proof thereof.

Seal of the county court.
[See 51 & 52 Vict. c. 43. s. 180.]

(2.) Every person who forges the seal or any process, decree or order of the county court, or who serves or enforces any such forged process, decree or order, knowing the same to be forged, or delivers or causes to be delivered to any person any paper purporting to be a copy of any summons, process, decree or order of the county court, knowing the same to be false, or who acts or professes to act under any false colour or pretence of the process or authority of the county court, shall be guilty of a felony.

(3.) It shall not be necessary that any decree or order issuing out of the county court, and sealed with the seal of such court in the prescribed manner, shall be signed by the judge.

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Jurisdiction of judge within or without his districts.
 [See 51 & 52 Vict. c. 43. s. 9.]

8. A judge shall, whether within the district of any of his courts or not, have jurisdiction to make any order or exercise on an *ex parte* application any authority or jurisdiction in any action, suit, matter, or proceeding, pending in any of the courts of which he is judge, which, if the same related to an action, 5
 suit, matter, or proceeding, pending in the High Court, might be given, made, or exercised by a judge of the High Court in chambers, and with the consent of both parties to an action, suit, matter, or proceeding, to hear or decide any action, suit, matter, or proceeding, at any place either within or without any such district. 10

Attachment of debts.

9. Upon the application of any person having obtained a decree or order of a county court, or a judgment or order of the High Court, for the recovery by or payment to him of any sum of money, whether by way of debt or damages, not exceeding in the case of a judgment or order of the High Court the sum of fifty pounds, 15
 a county court judge or recorder may, where the execution debtor resides within the jurisdiction of his court, make an order for the attachment of any debt owing or accruing to such execution debtor from any person residing within the same jurisdiction in like manner, subject to rules and orders under this Act, as orders for 20
 the attachment of debts are made by the High Court.

Admission of documents.

10.—(1.) Where a party desires to give in evidence any document, he may, not less than four clear days before the hearing, give notice to any other party in the action, suit, matter, or proceeding, who is competent to make admissions, requiring him to inspect and admit 25
 such document.

(2.) If such other party does not, within two days after receiving such notice, make such admission, any expense of proving the same at the trial shall be paid by him, whatever may be the result, unless the judge otherwise orders. 30

(3.) No costs of proving any document shall be allowed unless such notice is given, except in cases where, in the opinion of the clerk of the peace on taxation, the omission to give such notice has been a saving of expense.

When documents produced from proper custody may be read without further proof.

11.—(1.) Where any documents which would, if duly proved, be 35
 admissible in evidence are produced to the court from the proper custody, they shall be read without further proof, if in the opinion of the judge they appear genuine, and if no objection is taken thereto.

(2.) If the admission of any documents so produced is objected to the judge may adjourn the hearing for proof of the 40
 documents, and the party objecting shall pay the costs caused by such objection in case the documents are afterwards proved unless the judge otherwise orders.

12. Where a party desires to use at the hearing an affidavit by any particular witness, or an affidavit as to particular facts, he may not less than four clear days before the hearing give a notice, with a copy of such affidavit annexed, to the party against whom such affidavit is to be used, and unless such last-mentioned party within two clear days before the hearing gives notice to the other party that he objects to the use of such affidavit he shall be taken to have consented to the use thereof unless the judge otherwise orders, and the judge may make such order as he may think fit as to the costs of or incidental to any such objection.

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Notice of
desire to use
the affidavit
of a par-
ticular
witness or of
particular
facts.

13. In any action or proceeding in a county court in which a jury is sworn to try any issue of fact, if such jury is discharged without giving a verdict the county court judge may decide such issue of fact without directing another jury to be sworn.

Power to
judge to decide
issues of fact
where a jury
is discharged
without giving
a verdict.

14.—(1.) Subject to rules and orders under this Act, every decree and dismiss of a county court in any action and every affirmance or reversal of such decree or dismiss, save a decree for the possession of lands or tenements or an affirmance of such last-mentioned decree, shall be in full force and effect for six years from the date of the decree or dismiss, and it shall not be necessary to renew such first-mentioned decree or dismiss, or affirmance or reversal thereof, within the said period of six years unless there is some change in the party entitled to execution or liable thereto, and in such other cases as may be prescribed.

(2.) Every renewal shall be made in the manner and upon the affidavit of such person as may be prescribed.

Renewal of
decree or
dismiss.

15.—(1.) The liability to the payment of any debt, damages, and costs respectively which may be imposed by any decree or dismiss of a county court, or by any reversal or affirmance of any such decree or dismiss, shall be absolutely extinguished upon the expiration of the period of six years from the date of the decree or dismiss, affirmance or reversal, and shall not be capable of being enforced by any proceeding whatsoever.

Liability to
debt or costs
under decree
or dismiss, or
any reversal
or affirmance
thereof, to be
extinguished
in six years
unless new
security be
given.

(2.) Such decree, dismiss, reversal, or affirmance shall not be revived or kept in force by any parol evidence, or promise to pay the said debt damages or costs or any part thereof, or by any evidence of a part payment thereof: provided that if the defendant executes any new security in writing for such debt or costs such new security shall be of full force and effect in law.

[See
14 & 15 Vict.
c. 37, s. 144.]

16. If any person dissatisfied with any decree, dismiss, or order, whether adverse to him or in his favour, pronounced by any judge

Prosecution
of appeal
after abate.

A.D. 1900. in the exercise of any jurisdiction conferred whether before or
 ment by after the passing of this Act upon him by any statute relating to
 death, county courts gives notice of appeal in the manner provided by law,
 marriage, or bankruptcy. and if after such notice is given the appeal is abated by the death,
 marriage, or bankruptcy of any of the parties before the hearing 5
 thereof, then, subject to rules and orders of the High Court, the
 appeal may be prosecuted within such time, upon such terms
 and conditions, and in such manner, as may be prescribed by such
 rules and orders as aforesaid: provided that unless and until such
 rules and orders are made no such decree, dismiss, or order as 10
 last aforesaid shall be affected by the provisions of this section.

Amendment of proceedings. [See 51 & 52 Vict. c. 43. s. 27.] 17.—(1.) The judge, the Lord Chancellor, the Judge of Assize on
 Appeal, or any court or judge having cognizance of the matter,
 may at all times amend all defects and errors in any proceeding in
 the county court, whether there is anything in writing to amend 15
 by or not, and whether the defect or error is that of the party
 applying to amend or not.

(2.) All such amendments may be made with or without costs
 and upon such terms as to the judge, the Lord Chancellor, the
 Judge of Assize, or such court or judge as aforesaid, as the case 20
 may be, may seem just.

(3.) All such amendments as may be necessary for the purpose
 of determining the real question in controversy between the
 parties shall be made if duly applied for.

Omission or misstatement of addition or residence of a party not to render process, decree, or dismissal void. 14 & 15 Vict. c. 57. 18. Notwithstanding anything in section sixty-one of the Civil 25
 Bill Courts (Ireland) Act, 1851, no process, decree, or dismiss of
 any county court shall be null and void by reason only that the
 addition or last known place of residence of any of the parties is
 not stated or is incorrectly stated therein, but such process, decree,
 or dismiss, or the proceedings thereunder, may be set aside either 30
 wholly or in part, or such process, decree, or dismiss may be
 amended or otherwise dealt with as the judge or Judge of Assize,
 as the case may be, may think fit.

Recognition or judgment upon appeal. 45 & 46 Vict. c. 29. 19.—(1.) Every person dissatisfied with any decree, dismiss, or
 order, whether adverse to him or in his favour, pronounced by a 35
 judge in the exercise of any jurisdiction at law under the Acts
 conferring jurisdiction on county courts, who appeals therefrom in
 the manner specified in the County Court Amendment (Ireland)
 Act, 1882, shall, within the time specified in section five of that Act
 for serving notice of appeal, and in the manner specified in section 40
 six of that Act, either enter into such recognizance or make such
 lodgment as is required by the last-mentioned section to render
 the notice of appeal a stay of execution.

(2.) Such recognizance when duly entered into and after notice thereof given to the clerk of the peace, or such lodgment when duly made, as the case may be, shall be a stay of execution.

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(3.) The sufficiency of the sureties to any such recognizance shall be ascertained in the prescribed manner.

20.—(1.) The chairmen to be associated with the Lord Chancellor as the rule-making authority under section seventy-nine of the County Officers and Courts (Ireland) Act, 1877, shall in all cases be nominated by the Lord Chancellor.

Rules &c., and forms of proceedings and scale of costs to be framed by judges appointed by Lord Chancellor. [See 51 & 52 Vict. c. 43. s. 164.] 40 & 41 Vict. c. 56.

10 (3.) In any case not expressly provided for by the County Courts (Ireland) Acts, 1851 to 1889, or by this Act, or in pursuance thereof respectively, the general principles of practice in the High Court may be adopted and applied to actions, suits, matters, and proceedings in the county courts.

Deposit of moneys paid into court. [See 40 & 41 Vict. c. 56. s. 39.] [See 51 & 52 Vict. c. 43. s. 71.]

15 21.—(1.) The Lord Chancellor, with the concurrence of the judge of each county court may order at what places, and in what post office savings banks or other banks, moneys paid into such county court in pursuance of the provisions of any Act now in force or which may hereafter be enacted are to be deposited, and may make rules and regulations for such deposits, and every such deposit if in a post office savings bank may be made without restriction as to amount and without the declaration required of a depositor.

(2.) No money when deposited under this Act shall be paid out except upon an order of the Lord Chancellor or of the judge of the court into which the money was paid.

(3.) Any person deriving any benefit under any moneys paid into a post office savings bank under the provisions of this or any other Act may nevertheless open an account in a post office savings bank or in any other savings bank in his own name, without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks or of two accounts in the same savings bank.

(4.) In the application to Ireland of the Workmen's Compensation Act, 1897, the provisions of this section shall apply to money invested in a post office savings bank under that Act.

60 & 61 Vict. c. 97.

(5.) No rule under this section shall make provision with respect to any matter provided for by a rule or regulation under the Trustee Savings Banks Act, 1863.

28 & 27 Vict. c. 87.

22. The Treasury may, with the concurrence of the Lord Chancellor, make such arrangements as may seem requisite

Audit of accounts of stamp duties,

A.D. 1900. for the audit and report upon all accounts of stamp duties
 court fees, paid, fees received, moneys paid into court or lodged, or in
 moneys paid any manner received by any officer of a county court under any
 into court, Act now in force, or which may hereafter be enacted, relating
 &c. to county courts. All such accounts shall be kept and exhibited 5
 or rendered in the prescribed manner.

Interpreta-
 tion.

23. In this Act, unless the context otherwise requires,—

The expression “judge” means a county court judge and includes a recorder :

The expression “clerk of the peace” includes clerk of the 10
 Crown and peace, deputy clerk of the Crown and peace,
 and deputy clerk of the peace :

The expression “action” means any proceeding commenced
 in a county court by ordinary civil bill, or by default process,
 or in ejectment or replevin : 15

The expression “suit” means an equity suit :

The expression “matter” means any proceeding commenced by
 petition ; and

The expression “prescribed” means prescribed by rules and
 orders under this Act. 20

Short title
 and con-
 struction.

24. This Act may be cited as the County Courts (Ireland) Act,
 1900, and shall be construed as one with the County Courts Ireland
 Acts, 1851 to 1889, and may be cited with those Acts.

Commence-
 ment of Act.

25. Subject as in this Act mentioned, this Act shall come into
 operation on the first day of January one thousand nine hundred 25
 and one.

Repeals.

26. The enactments specified in the Schedule to this Act are
 hereby repealed to the extent in the third column of that Schedule
 mentioned.

SCHEDULE.

A.D. 1900.

ACTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
5 14 & 15 Vict. c. 57.	The Civil Bill Courts (Ireland) Act, 1851.	Section one hundred and thirty-nine, from the beginning of the section to "provided always that." Sections one hundred and forty to one hundred and forty-four, so far as not repealed.
10 27 & 28 Vict. c. 90.	The Civil Bill Courts Procedure Amendment Act (Ireland), 1864.	Section fifty-eight.
15 40 & 41 Vict. c. 56.	The County Courts and Officers (Ireland) Act, 1877.	Sections thirty-nine, fifty-nine and sixty. Section seventy-nine, from "to be selected" to "such selection."
60 & 61 Vict. c. 37.	The Workmen's Compensation Act, 1897.	Article (17) of the First Schedule.

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